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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,348	10/28/2003	Othman A. Hamed	60892.000016	2563
21967	7590	04/29/2005	EXAMINER	
HUNTON & WILLIAMS LLP INTELLECTUAL PROPERTY DEPARTMENT 1900 K STREET, N.W. SUITE 1200 WASHINGTON, DC 20006-1109			ALVO, MARC S	
			ART UNIT	PAPER NUMBER
			1731	
DATE MAILED: 04/29/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/694,348

Applicant(s)

HAMED ET AL

Examiner

Steve Alvo

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Claims 37-51 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The term "third insult acquisition rate of less than 10 seconds" was not originally disclosed and is new matter. Page 44 of the specification refers to an "acquisition time" not to and "acquisition rate". A rate would be over a period of time is different than a time period in seconds. Table 10, the last column shows the "3rd Insult" in seconds. This is a measured time and not the "acquisition rate". Also the term "less than 10" is broader than the specific times shown in Table 10. For example, "less than 10 would include times of 0.1 and 9.9, neither of which is disclosed by Applicant.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 37- 51 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over ADMITTED PRIOR ART (Specification "Description of Related Art" and pages 15, 16 and 24) or KOLTISKO et al (5,938,995).

The ADMITTED PRIOR ART or KOLTISKO et al teach forming a cross-linked fiber in the same way that Applicant forms the cross-linked fiber, e.g. KOLTISKO et al discloses using the same cross-linking agent as the preferred cross-linking agent of the instant process (glyoxylic acid) and forming absorbent articles (diapers) from the fibers. The instant product would have the same properties as the absorbent articles of the ADMITTED PRIOR ART or KOLTISKO et al as they are formed in the same way. It is noted that the instant specification, page 10 states that absorbent articles preferably have a centrifuge retention capacity of less than 0.48. How do the centrifuge retention properties of the absorbent articles of the ADMITTED PRIOR ART or KOLTISKO et al differ from that of the instant product? See the ADMITTED PRIOR ART, page 1 for an acquisition layer between the core and top sheet and the core between and top and bottom sheets. See ADMITTED PRIOR ART pages 15 and 16 for using known alkali treatments. See ADMITTED PRIOR ART page 24 for using known super-absorbent polymer with the fibers to store liquid. If necessary, it would have been obvious to adjust the amount of cross-linking agent to obtain the optimum properties. The mere recitation of a newly discovered function, considered as inherently possessed by the prior art process, does not cause claims drawn thereto to distinguish over the prior art. In re Best, 195 USPQ 430, 433(CCPA 1977). Hence the prior art references use the same steps of treating fibers with a cross-linking agent to produce an absorbent article. The product of would have the same properties (retention capacity and acquisition rate) as the instant product as it is formed from the same material; and treated in

the same environment with the same cross-linking agent, e.g. glyoxylic acid, and formed into the same absorbent product.

Claims 37 and 38 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over SEARS (6,620,293).

SEARS teach forming a cross-linked fiber in the same way that Applicant forms the cross-linked fiber, e.g. SEARS et al discloses treating mercerized (NaOH treated fibers) with a cross-linking agent and making absorbent articles, e.g. diapers (column 7, lines 20-22), from the fibers. See column 7, lines 1-8 for Gravimetric Absorption Testing system. The instant process can use "Porosanier-J-HP" pulp from Rayonier Performance Fibers Division and Buckeye's HPZ products, available from Buckeye Technologies, see the instant specification, page 16, lines 18-21. This is the same caustic treated pulp used by SEARS (column 4, lines 40-45). How do Applicant's centrifuge retention properties differ from the absorbent properties of SEARS? If necessary, it would have been obvious to adjust the amount of cross-linking agent to obtain the optimum properties. The mere recitation of a newly discovered function, considered as inherently possessed by the prior art process, does not cause claims drawn thereto to distinguish over the prior art. In re Best, 195 USPQ 430, 433(CCPA 1977). Hence SEARS teaches use the same steps of treating mercerized fibers with a cross-linking agent to produce an absorbent article. The product of would have the same properties (retention capacity and acquisition rate) as the instant product as it is formed from the same material (mercerized fibers); and treated in the same environment with the same treating agent (cross-linking agent), and formed into the same absorbent product (diapers).

Claims 39-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over SEARS as applied to claim 39 above, and further in view of ADMITTED PRIOR ART (Specification "Description of Related Art" and page 24).

The ADMITTED PRIOR ART, page 1 teaches using an acquisition layer between the core and top sheet and the core between and top and bottom sheets. It would have been obvious to use the acquisition layer of SEARS between the top sheet and absorbent structure as such is taught by the ADMITTED PRIOR ART. ADMITTED PRIOR ART pages 15 and 16 for using known alkali treatments. See ADMITTED PRIOR ART page 24 for using known super-absorbent polymer with the fibers to store liquid. The ADMITTED PRIOR ART on page 24, lines 20-23, teaches that it is known to use a super-absorbent polymer (SAP) with the absorbent fibers to store liquid. It would have been obvious to use SAP with the absorbent fibers of SEARS to increase the absorption and storage of liquid.

Claims 37-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over ADMITTED PRIOR ART (Specification "Description of Related Art and paragraph bridging pages 10-11 and pages 15, 16 and 24) or KOLTISKO et al (5,938,995) or SEARS in view of WO97/04162 or SUN et al (5,858,021) or LEITHAM et al (2002/0096276) or US 2003/0070776.

WO97/04162 or SUN et al (5,858,021) or LEITHAM et al (2002/0096276) or US 2003/0070776 teaches increasing the absorbency of absorbent fibers used in absorbent articles by treating the fibers with alkali. It would have been obvious to the artisan to improve the absorbent properties of the fibers of the ADMITTED PRIOR ART or KOLTISKO et al using the alkali treatment of WO97/04162 or SUN et al (5,858,021) or LEITHAM et al (2002/0096276) or US 2003/0070776.

Applicant's arguments have been considered, but are not convincing as the properties of SEARS or the ADMITTED PRIOR ART or KOLTISKO et al have not been shown to differ over the claimed properties. As set forth in the rejections above the retention capacity and acquisition rate of the applied art would not differ from the retention capacity and acquisition rate of the instant product as the instant products are formed from the same material and made in the same manner as the products of SEARS or the ADMITTED PRIOR ART or KOLTISKO.

Applicant states that RAYNOIR is the common assignee to both SEARS and the instant Application. Accordingly the 35 USC 102 (a) rejection has been changed to a 102(e) rejection. SEARS has an effective filing date of April 11, 2001, which is prior than the effective filing date of the instant Application which is June 11, 2002.

Effective November 29, 1999, subject matter which was prior art under former 35 U.S.C. 103 via 35 U.S.C. 102(e) is now disqualified as prior art against the claimed invention if that subject matter and the claimed invention "were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.". Applicant has not shown that the two Applications were commonly owned at the time of the invention.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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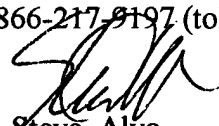
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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve Alvo whose telephone number is 571-272-1185. The examiner can normally be reached on 5:45 AM - 2:15 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Steve Alvo
Primary Examiner
Art Unit 1731

msa